

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Tony L. Hammond; and
Nanci E. Langley

Wesleyville Branch
Wesleyville, Pennsylvania

Docket No. A2011-12

ORDER AFFIRMING DETERMINATION

(Issued July 26, 2011)

I. INTRODUCTION

On March 28, 2011, William A. Wittenberg, Chair of Planning Commission, Borough of Wesleyville, PA (Petitioner), filed an appeal with the Commission seeking review of the Postal Service's determination to close the Wesleyville Finance, PA Branch (Wesleyville Branch).¹ After reviewing the record in this proceeding, the Commission affirms the Final Determination to close the Wesleyville Branch.

¹ Petition for Review received from William A. Wittenberg, March 28, 2011 (Petition).

II. PROCEDURAL HISTORY

In Order No. 707, the Commission established Docket No. A2011-12 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any pleadings responsive to the appeal.² On April 12, 2011, the Postal Service filed a notice in support of its decision, which also challenges the Commission's subject matter jurisdiction to hear this appeal, and indicates that an Administrative Record complying with standards applicable to post office closings for Wesleyville Branch is not required.³ On May 23, 2011, the Postal Service filed additional comments as well as a brief.⁴

On April 19, 2011, Petitioner filed a Participant Statement expanding on his arguments against the closing.⁵ Further, Petitioner submitted a response to comments filed by the Postal Service⁶ as well as a brief.⁷

The Commission issued an information request asking the Postal Service to provide the Administrative Record supporting its Final Determination to close the

² Notice and Order Accepting Appeal and Establishing Procedural Schedule, March 31, 2011 (Order No. 707).

³ Notice of United States Postal Service, April 12, 2011 (Notice). The Notice includes three exhibits: Exhibit 1, Final Determination to Close the Wesleyville Finance, PA Classified Branch and Continue to Provide Retail and Post Office Box Service Through the Erie GMF, PA Post Office (Final Determination); Exhibit 2 identifies four additional Postal Service retail facilities near ZIP Code 16510; and Exhibit 3 identifies five additional locations to buy stamps.

⁴ Comments of United States Postal Service, May 23, 2011 (Postal Service Comments).

⁵ Participant Statement received from William A. Wittenberg, April 19, 2011 (Wittenberg Statement).

⁶ Revision to Save the Wesleyville Post Office, June 7, 2011 (Petitioner's Reply Comments).

⁷ Petitioner's Brief, June 17, 2011 (Petitioner's Brief).

Wesleyville Branch.⁸ On June 16, 2011, the Postal Service filed the Administrative Record with the Commission.⁹

On June 30, 2011, the Public Representative filed comments.¹⁰

III. BACKGROUND

Wesleyville Branch is located in the borough of Wesleyville in Erie County, Pennsylvania. Final Determination at 3. The community is comprised of retired individuals, those who commute to work at nearby communities, and those who work in local businesses. There are four religious institutions and 66 businesses located in the area. *Id.*; see also Administrative Record, Item No. 22 at 7. The Postal Service has decided to close Wesleyville Branch and provide Post Office Box Delivery Service at the Erie GMF, PA post office (Erie GMF) located 1.9 miles away. Final Determination at 1; see also Administrative Record, Item No. 9 at 1.

Wesleyville Branch provides service 33 hours a week from 9:00 a.m. to 12:30 p.m. and 1:30 p.m. to 4:00 p.m., Monday through Friday, and 9:00 a.m. to 12:00 p.m. on Saturday. Final Determination at 1. In addition to providing retail services, *e.g.*, sale of stamps, stamped paper, and money orders, it provides service to 183 post office box customers. *Id.*

Office receipts for the Wesleyville Branch decreased from \$587,409.00 in 2008 to \$448,530.00 in 2009. *Id.* The Postal Service indicates that effective and regular service will continue to be provided through city delivery service and retail service provided by Erie GMF. Window service hours at Erie GMF are from 8:00 a.m. to 6:00 p.m., Monday through Friday and 8:00 a.m. to 12:30 p.m. on Saturday. *Id.*

⁸ Commission Information Request No. 1, June 9, 2011.

⁹ See United States Postal Service Notice of Filing and Application for Non-Public Status, June 16, 2011, which included a redacted copy of the Administrative Record. An unredacted copy was filed under seal. The Administrative Record is cited herein as Administrative Record.

¹⁰ Comments of the Public Representative, June 30, 2011 (PR Comments).

On August 18, 2009, questionnaires regarding the possible change of service were distributed to the post office box customers and available over the counter at the Wesleyville Branch. *Id.* Notice of the closure was provided on March 18, 2011.

IV. PARTICIPANT PLEADINGS

Petitioner. Petitioner opposes the closure of the Wesleyville Branch arguing that the Postal Service violated 39 U.S.C. 404(d). Wittenberg Statement at 1. In support of his appeal, Petitioner argues that the Postal Service did not observe procedures required by law, including failing to:

- provide supporting documentation along with the determination;
- provide 60 days' notice of the intent to close the facility;
- consider the effect of closure on the community; and
- consider the economic savings resulting from the closure.

Id. at 1-3.

Petitioner responds to comments filed by the Postal Service contending that the Postal Service did not abide with the spirit and intent of the law. Petitioner's Reply Comments at 1. Petitioner reiterates several points raised in his Participant Statement. Petitioner adds that while there is another drive/walk up mail box in the borough of Wesleyville, it is not centrally located. *Id.* at 4. Petitioner concludes that customers were not provided due process in the closure of the Wesleyville Branch. *Id.*

Public Representative. The Public Representative maintains that the Postal Service has followed the required discontinuance procedures of section 404(d). She notes that the Wesleyville Branch was included in the Postal Service's Station and Branch Optimization Initiative.¹¹ PR Comments at 4.

¹¹ See Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, March 10, 2010 (Docket No. N2009-1 Advisory Opinion).

The Public Representative contends that the Postal Service provided notice in conformity with 39 U.S.C. 404(d). *Id.* at 5. She adds that the Postal Service has considered the effect the closing will have on the community and demonstrated that it may continue to provide regular and effective postal services to the community. *Id.* at 6. She adds that the administrative record and final determination demonstrate that the Postal Service has taken the impact of the loss of the Wesleyville Branch into consideration.

The Public Representative concludes that the public is ultimately served by the resulting savings that cumulatively may assist the Postal Service in reducing its massive debt. *Id.*

Postal Service. The Postal Service argues that this appeal should be denied. The Postal Service maintains its position that section 404(d) review does not apply to closing the Wesleyville Branch. The Postal Service explains that section 404(d) does not apply to retail locations such as stations or branches which are subordinate to a post office. Postal Service Comments at 1.

The Postal Service argues that even if the requirements of section 404(d) were applied in the context of the discontinuance of the Wesleyville Branch, it has satisfied the salient statutory provisions. *Id.* On August 18, 2009, the Postal Service distributed questionnaires to customers notifying them of the possible discontinuance, inviting comments on the potential change to the postal retail network. *Id.* The Postal Service notes that this notice was furnished to customers well over 60 days before the proposed closing date as required by law. The Postal Service adds that in a letter dated March 18, 2011, it informed community leaders of its decision to close the Wesleyville Branch. *Id.* at 3.

Further, the Postal Service contends that it considered the pertinent criteria of section 404(d), including the effect on postal services, the community, and employees and economic savings gained from the closing. *Id.*

V. COMMISSION ANALYSIS

Under 39 U.S.C. 404(d)(1), prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. If the Postal Service decides to close the post office, it must make its Final Determination available to the public for 30 days, allowing patrons the opportunity to appeal the determination to the Commission. The Commission reviews the Postal Service's determination to close or consolidate a post office "on the basis of the record before the Postal Service in the making of such determination." See 39 U.S.C. 404(d)(5).

A. Notice to Customers

Petitioner contends that the Postal Service failed to provide 60 days' notice of its intent to close the Wesleyville Branch and did not give patrons an opportunity to present their views. Wittenberg Statement at 2.

The Wesleyville Branch was included in the Postal Service's Station and Branch Optimization and Consolidation Initiative. As part of its investigation on August 18, 2009, the Postal Service distributed questionnaires regarding possible closure to post office box customers at the Wesleyville Branch. Questionnaires were also available over the counter for retail customers. Seventy-nine questionnaires were returned: 18 were favorable, 22 were unfavorable, and 39 expressed no opinion regarding the proposed alternate service. Final Determination at 1. On the second page of the questionnaires, the Postal Service offers customers an opportunity to submit any additional comments by August 28, 2009. See Administrative Record, Item No. 10 at 2.

On March 18, 2011, the Postal Service posted a notice that the Wesleyville Branch would close after April 22, 2011. On March 28, 2011, the Commission received and accepted an appeal from Petitioner.

The record in this proceeding indicates that customers of the Wesleyville Branch were afforded notice that the Postal Service was reviewing the Wesleyville Branch for possible closure. Further, customers were given an opportunity to provide input to the Postal Service in writing. Based on review of the record, the Commission finds that the Postal Service has satisfied the notice requirements of 39 U.S.C. 404(d).

B. Other Statutory Considerations

Under section 404(d)(2)(A), in making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. In response to questionnaires regarding the possible closure of the Wesleyville Branch, customers raised concerns. Their concerns and the Postal Service's responses are summarized in the Final Determination.

Petitioner contends that the Postal Service failed to provide customers with any findings and documentation supporting its determination. Wittenberg Statement at 1. The Commission does not find any indication that the official Final Determination or Administrative Record were initially made available to Wesleyville Branch customers. The Postal Service filed a copy of the Final Determination to close the Wesleyville Branch on April 12, 2011, and copies of the Administrative Record in this proceeding on June 16, 2011. Petitioner and other customers had an opportunity to review the record and submit comments. The Final Determination and Administrative Record should have been made available to customers at the outset. However, any prejudice caused by the failure to do so initially has been cured by their subsequent inclusion in the record.

Effect on the community. Petitioner contends that the Postal Service has failed to consider the current conditions of Eastern Erie County and Northwestern Pennsylvania. *Id.* at 3. The Postal Service indicates that for the 12 months ending June 2009, mail volume for this region has declined by 12.6 percent. Administrative Record, Item No. 7 at 14. Further, the United States Census Bureau figures confirm

that between 1990 and 2009, the population of Wesleyville declined slightly from 3,655 to 3,321.¹²

The Postal Service notes that service provided through the Erie GMF and other contract units, stations, and branches within the area is expected to be able to handle any future growth in the community. The Postal Service explains that it will help preserve the community identity by retaining the mailing address. Final Determination at 3.

Upon review of the record in this proceeding, the Commission concludes that the Postal Service has satisfied the requirement that it consider the effect of closing on the community. 39 U.S.C. 404(d)(2)(i).

Effective and regular service. Customers contend that the Erie GMF is not convenient for those living in the Wesleyville community. Wittenberg Statement at 1. The Postal Service acknowledges that the distance may cause an inconvenience for some customers. The record indicates that there are five contract postal units, post offices, stations, and branches located within a 6-mile radius of the Wesleyville Branch. Final Determination at 1. The Postal Service adds that there are two alternate stamp locations 0.93 miles from the Wesleyville Branch. *Id.*

Customers express concerns regarding having to change their addresses. The record indicates that there are no general delivery customers. Administrative Record, Item No. 1. The Postal Service explains that post office box customers choosing to use the Erie GMF will not have to change their addresses. Final Determination at 1. Further, the Erie GMF has the space to accommodate more boxes and has enough vacant boxes to accommodate the customers from the Wesleyville Branch. *Id.*; see *also* Administrative Record, Item No. 22 at 5. Customers who choose to utilize the Erie GMF will experience an increase in window service hours. Final Determination at 1.

Petitioner specifically raises a concern regarding how service will be provided to persons with disabilities who need the assistance of a wheelchair. He explains that the

¹²See U.S. Census Bureau, 2009 Population Estimates, Census 2000, 1990 Census.

Wesleyville Branch was especially designed and constructed for wheelchair access. Wittenberg Statement at 5. He claims that neither the Erie GMF nor Harborcreek post office are designed for wheelchair access. *Id.* Similar sentiments are expressed by customers in questionnaires returned to the Postal Service. *Id.* at 4. The Postal Service responds that customers are not required to travel to another post office to receive mail or obtain retail services. These services will be provided by carrier to a curbside mailbox located close to the customer's residence. Final Determination at 3.

Upon review of the record in this proceeding, the Commission concludes that the Postal Service has considered its ability to provide a maximum degree of effective and regular service. 39 U.S.C. 404(d)(2)(A)(iii).

Economic savings and effect on employees. Petitioner contends that the Postal Service inaccurately calculated or misrepresented the economic savings resulting from the closing. Wittenberg Statement at 3. Petitioner contends that the clerk's salary reported by the Postal Service should not be included as savings because the clerk is being reassigned to another facility. *Id.* While the savings resulting from the closure appear to be small, Petitioner does not argue that there are no savings.

The issue of estimated savings has been addressed in numerous post office appeal proceedings. Moreover, in Docket No. N2009-1, the Commission urged the Postal Service to develop a more holistic approach for estimating the impact of decisions to close retail facilities. Docket No. N2009-1 Advisory Opinion at 57-61. The Postal Service recently adopted new rules governing the closing of postal retail facilities. 76 FR 41413, 41418 (July 14, 2011). In conjunction with its new rules, the Postal Service indicates it will implement a more robust measurement of financial impact.

The Postal Service indicates that the lease for the facility housing the Wesleyville Branch does not expire until November 2012 and lacks a termination clause, requiring it to incur \$70,000.00 in additional rental costs. Final Determination at 4. In light of this, Petitioner suggests that at a minimum, the Wesleyville Branch should continue to operate through the term of the lease. Petitioner's Reply Comments at 4. The

estimated savings do not appear to reflect this additional cost. In the short term, savings appear to be minimal at best.

The record indicates that the Postal Service has considered the economic impact of its closure decision and has taken steps to address the effect on employees. Based on a review of the record, the Commission concludes that the Postal Service has satisfied the requirements of section 404(d)(2)(A).

VI. CONCLUSION

Based on its review of the entire record before it, the Commission concludes that the Postal Service has adequately considered all requirements of 39 U.S.C. 404(d). Accordingly, its determination to close the Wesleyville Branch is affirmed.

It is ordered:

The Postal Service's determination to close the Wesleyville Branch is affirmed.

By the Commission.

Shoshana M. Grove
Secretary